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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/816,705	03/23/2001	Kazuhiko Sugiyama	P/126-202	5930
44987	7590	10/17/2006	EXAMINER	
HARRITY SNYDER, LLP 11350 Random Hills Road SUITE 600 FAIRFAX, VA 22030			RYMAN, DANIEL J	
			ART UNIT	PAPER NUMBER
			2616	

DATE MAILED: 10/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/816,705

Applicant(s)

SUGIYAMA ET AL.

Examiner

Daniel J. Ryman

Art Unit

2616

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 10 October 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

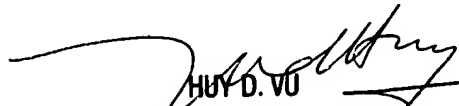
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.


HUY D. VU
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600

Continuation of 3. NOTE: Applicant has amended the claims and thereby changed the scope of the claims. Further search and/or consideration is required in order to make a proper patentability determination. Examiner notes that the amendments to the claims appear to overcome the rejection under 35 U.S.C. Section 112, first paragraph.

On p. 8 of the Response, Applicant asserts that the Office Action, mailed 8/10/2006, "provided a new grounds of rejection with respect to the pending claims" where "this rejection was not necessitated by any amendments made to the claims in the previous response." As such, Applicant maintains that "the [Office Action mailed 8/10/2006] has been improperly deemed a Final rejection." Examiner, respectfully, disagrees. The Office Action, mailed 8/10/2006, as outlined in that Office Action, was issued based upon the Amendment to the claims, filed 11/7/2005. This Amendment changed all instances of the term "band" to "bandwidth." Since the rejection under 35 U.S.C. Section 112, first paragraph, was necessitated by this amendments to the claims, the Office Action, mailed 8/10/2006, did not provide a new grounds of rejection, as alleged by Applicant. As such, it was proper to make this Office Action final.

Examiner notes that MPEP Section 706.07(a) requires that "second or subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in [certain IDSs]." Thus, the Office Action mailed 8/10/2006, was properly made final only if it was based on Applicant's Amendment. Examiner asserts that it was. In the present case, an Amendment to the claims was received and entered on 11/7/2005 which changed all instances of "band" to "bandwidth." Although a subsequent After Final Amendment was received on 2/27/2006, this Amendment was provisionally entered only "for purposes of appeal." See Advisory Action, mailed 3/7/2006. When Examiner reopened prosecution, he was no longer acting pursuant to an Appeal and therefore the last set of claims to have been entered in the case was the amended set of claims filed 11/7/2005. Thus, the Office Action, mailed 8/10/2006, was properly made final since the 35 U.S.C. Section 112, first paragraph, rejection of that Office Action was based solely on applicant's amendments, filed 11/7/2005.

On pages 9-10 of the Response, Applicant asserts that Doshi fails to disclose "that router 220 includes logic to set a path having a first band that is at least two times a band necessary for transferring a VoIP packet in accordance with control by a call control apparatus." Examiner, respectfully, disagrees. As previously asserted, any path will have at least two times the band necessary for transferring a VoIP packet. For instance, Doshi discloses that a path "is comprised of a plurality of path links established over a plurality of physical layer router transport segments 225" (col. 4, lines 6-10). Since the path is a physical link, it is implicit that the physical link is capable of carrying more than a single IP packet at any given time, as suggested by the fact that each path carries multiple calls (col. 4, line 65-col. 5, line 6). Doshi also discloses that "[t]he capacity requirements over each network element, such as routers 220 and physical layer router transport segments 225 are virtually provisioned within available bandwidth capacity for delay sensitive traffic requirements (col. 4, lines 32-40). This provisioning is done by a Virtual Provisioning Server by modifying routing weights (col. 5, lines 33-41). Thus, the Virtual Provisioning Server, which is, as broadly defined, a call control apparatus, provisions a router by setting a routing weight in the router. This routing weight sets a path in the router since the routing weights are used to determine a routing path. As such, Examiner maintains that Doshi discloses that router 220 includes logic to set a path (where the path is set through use of routing weights) having a first band that is at least two times a band necessary for transferring a VoIP packet (where any path has such a band) in accordance with control by a call control apparatus (where the Virtual Provisioning Server sets the routing weights).

On pages 10-11, Applicant asserts that Doshi does not set a new path since Doshi "merely provisions traffic over existing links." However, this assertion assumes that a single path comprises a single link. This is not the case. Doshi discloses that a path "is comprised of a plurality of path links established over a plurality of physical layer router transport segments 225" (col. 4, lines 6-10). Thus, if a single link of a path changes, then the path is "a new path." Examiner maintains that when Doshi sends traffic over different links in light of congestion or link failures, Doshi discloses that the traffic is sent over a "new path."

In light of the foregoing, Examiner maintains that the the rejection of the claims in the Final Office Action, filed 8/10/2006, was proper.